

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of)	
Federal-State Joint Board on)	
Universal Service)	
)	
)	
United States Cellular Corporation,)	
North Carolina RSA #4, Inc.)	CC Docket No. 96-45
North Carolina RSA No. 6, Inc.)	(DA 04-3536)
USCOC North Carolina RSA #7, Inc.)	
North Carolina RSA #9, Inc.)	
Jacksonville Cellular Telephone Company)	
Wilmington Cellular Telephone Company)	
)	
For Designation as an Eligible)	
Telecommunications Carrier)	
In the State of North Carolina)	

REPLY COMMENTS OF THE NORTH CAROLINA RURAL CARRIER GROUP

TABLE OF CONTENTS

Summary	iii
1. The Commission should deny or table U.S. Cellular’s Petition in light of its release of a Notice of Proposed Rulemaking on ETC designations and Universal Service Support distribution.....	3
2. The Commission should deny U.S. Cellular’s Petition because multiple ETC designations in an area undermines the sustainability and solvency of the Universal Service Fund.....	5
3. Creating or subsidizing competition for the sake of competition is not the intended use of Universal Service Funds.....	5
Conclusion.....	6

Summary

The North Carolina Rural Carrier Group, an *ad hoc* group of incumbent local exchange carriers serving rural areas, submits these reply comments in opposition to the petition of North Carolina RSA #4, Inc., North Carolina RSA No. 6, Inc., USCOC North Carolina RSA #7, Inc., North Carolina RSA #9, Inc., Jacksonville Cellular Telephone Company, and Wilmington Cellular Telephone Company (collectively “U.S. Cellular”) for designation as an eligible telecommunications carrier (“ETC”) throughout its licensed service areas in North Carolina, including rural areas served by the North Carolina Rural Carrier Group, for the purposes of receiving federal universal service support. The North Carolina Rural Carrier Group urges the Commission to deny U.S. Cellular’s Petition. Absent denying the Petition, the North Carolina Rural Carrier Group recommends that the Commission delay action on U.S. Cellular’s Petition until it issues its order on the Recommended Decision, which is due February 27, 2005.

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REPLY COMMENTS OF THE NORTH CAROLINA RURAL CARRIER GROUP

In response to the Federal Communications Commission (“FCC” or “Commission”) Public Notice in the above captioned matter, the rural local exchange companies of Star Telephone Membership Corporation (“Star TMC”), Atlantic Telephone Membership Corporation (“Atlantic TMC”), Barnardsville Telephone Company (“Barnardsville”), Citizens Telephone Company (“Citizens”), Ellerbe Telephone Company, Inc. (“Ellerbe”), MebTel, Inc. (“MebTel”), Randolph Telephone Company (“Randolph”), Randolph Telephone Membership Corporation (“Randolph TMC”), Saluda Mountain Telephone Company (“Saluda Mountain”), Service Telephone Company (“Service”), and Tri-County Telephone Membership Corporation (“Tri-County TMC”), (collectively the “North Carolina Rural Carrier Group”) through their consultant

John Staurulakis, Inc. submit these reply comments.¹ The North Carolina Rural Carrier Group opposes the petition filed by North Carolina RSA #4, Inc., North Carolina RSA No. 6, Inc., USCOC North Carolina RSA #7, Inc., North Carolina RSA #9, Inc., Jacksonville Cellular Telephone Company, and Wilmington Cellular Telephone Company (collectively “U.S. Cellular”) for designation as an eligible telecommunications carrier (“ETC”) throughout its licensed service areas in North Carolina for the purposes of receiving federal universal service support.² The North Carolina Rural Carrier Group urges the Commission to deny U.S. Cellular’s Petition. Absent denying the Petition, the North Carolina Rural Carrier Group recommends that the Commission delay action on U.S. Cellular’s Petition until it issues its order on the Recommended Decision. There are a number of issues being considered by the Commission in its Notice of Proposed Rulemaking regarding the designation of additional ETCs. Many of which will be exacerbated by continuing to make ETC designations prematurely.

CTIA – the Wireless Association™ (formally known as the Cellular Telecommunications & Internet Association) (“CTIA”) filed comments in support of U.S. Cellular’s petition. CTIA’s arguments in support of U.S. Cellular’s filing are overly broad. CTIA does not cite any specific examples or evidence that U.S. Cellular’s designation as an ETC advances the public interest. It is not merely enough for U.S. Cellular be able to provide all of the services supported by the Universal Service support mechanisms but that the public interest is advanced. There is no clear empirical evidence

¹ Federal Communications Commission, Public Notice. Parties are invited to Comment on Petitions for Eligible Telecommunications Carrier Designation, DA 04-3536, CC Docket No. 96-45, November 9, 2004.

² North Carolina RSA #4, Inc., North Carolina RSA No. 6, Inc., USCOC North Carolina RSA #7, Inc., North Carolina RSA #9, Inc., Jacksonville Cellular Telephone Company, and Wilmington Cellular Telephone Company, *In the Matter of Federal-State Joint Board on Universal Service*, Petition for Eligible Telecommunications Carrier, DA 04-3536, CC Docket No. 96-45, November 9, 2004. (“Petition”)

proving CTIA's claim that "U.S. Cellular's ETC designation will bring the benefits of competition to an underserved marketplace."³ Where is the evidence indicating that consumers living in the areas served by the North Carolina Rural Carrier Group are being underserved considering most of these carriers have advanced services available in 95% or more of their service territory? The public interest is not advanced simply by claiming it is. Neither U.S. Cellular nor CTIA provides the proof the FCC needs for its "rigorous" review. Under current guidelines for ETC designation, U.S. Cellular does not measure up. It is difficult to believe that if U.S. Cellular cannot prove its petition under current guidelines for ETC designation, it would be able to do so later under new, and presumably stricter, guidelines.

1. The Commission should deny or table U.S. Cellular's Petition in light of its release of a Notice of Proposed Rulemaking on ETC designations and Universal Service Support distribution.

On June 8, 2004 the Commission released its Notice of Proposed Rulemaking.⁴ In its Recommended Decision, the Federal-State Joint Board on Universal Service recommended several items that if accepted will modify the ETC designation process at the Commission and change the method of federal universal service support distribution. In sum, these recommendations now before the Commission may significantly alter the ETC landscape. The North Carolina Rural Carrier Group respectfully recommends that the Commission defer any decision on this and any other such petitions currently pending until the Commission issues its order on the Recommended Decision. This will allow the

³ See Comments of the CTIA – The Wireless Association™, November 23, 2004

⁴ *In the Matter of Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 04-127, Tel. June 8, 2004. ("*Recommended Decision*")

Commission to consider the ramifications of U.S. Cellular's Petition in the context of the forthcoming rule changes and to ensure that measures adopted are able to accomplish the goal of improving the financial viability of the Universal Service Fund in the future.

The North Carolina Rural Carrier Group has cause to be concerned that granting U.S. Cellular's Petition prematurely will create a situation where U.S. Cellular may claim to be grandfathered under the old ETC designation provisions set forth in the *Virginia Cellular* decision in the hopes of retaining ETC status even if the Commission adopts new guidelines that U.S. Cellular may not be able to meet. This rush to obtain ETC designation before an appropriate framework is established to evaluate fully the overall impact of such designations on the Universal Service Fund and on consumers in rural service areas is not in the public interest. Designating Competitive ETCs under the existing framework will only make resolving current issues much more complex and difficult, undermining the progress made in establishing an appropriate framework.

It is undeniable that the Joint Board's Recommended Decision has significant and far-reaching implications regarding the designation of ETCs by the Commission and the distribution and capping of federal universal service support. To grant U.S. Cellular's Petition prior to a forthcoming order on matters for which parties have been notified through the Notice of Proposed Rulemaking may affect the respective abilities of the North Carolina Rural Carrier Group to continue to provide universal service at affordable rates.

Verizon Communications, Inc. ("Verizon") also filed comments in opposition to U.S. Cellular's petition for ETC designation. In part, Verizon states, "If the Commission does not reject the U.S. Cellular petition outright, it should at least delay

consideration of the petition pending outcome of the current rulemaking proceeding considering ways to control growth of the high cost fund.”⁵

Since the Notice of Proposed Rulemaking has been issued, the landscape has changed. The Commission is now in a better position to consider various issues from the comments filed as requested in the Notice.

2. The Commission should deny U.S. Cellular’s Petition because multiple ETC designations in an area undermines the sustainability and solvency of the Universal Service Fund.

The Universal Service Fund is not a bottomless pot of money. In recent weeks, we have seen the Universal Service Administrative Company (“USAC”) refrain from issuing funding commitment decision letters for lack of funds. In fact, there has been at least one suggestion that in order for USAC to meet funding requests, the current 8.9% Universal Service Fund surcharge on telephone companies would need to be increased to 12.5% and possibly to as much as 25%.⁶ Such an increase, which carriers ultimately pass on to their subscribers, would dramatically increase consumers’ telephone bills, contrary to Congress’ intent of ensuring that consumers in rural areas have, as indicated in the Telecommunications Act of 1996, access to “quality services at just, reasonable and affordable rates.”

⁵ See Verizon November 24, 2004 comments at page 3.

⁶ Anne Marie Squeo, “Rural Phone Subsidy’s Shortfall Could Be Costly for Consumers,” *The Wall Street Journal*, November 1, 2004, Page A2.

3. Creating or subsidizing competition for the sake of competition is not the intended use of Universal Service Funds.

The notion that competition universally benefits all customers in all areas and thus all competitors should qualify for universal service support is not what Congress intended when The Telecommunications Act of 1996 (“Act”) was passed. There are several provisions in the Act that identified the need to temper and in some instances forestall competition in areas served by rural carriers.⁷ These provisions were enacted because Congress knew that in certain instances the results of a competitive market could run contrary to the public interest. One reason why competition can be destructive rather than beneficial is due to the economic reality of large investments in plant and equipment for telecommunications service in sparsely populated areas. In these instances, the public interest has been best served by creating the largest critical mass of customers for one carrier; thereby creating the best economies of scale for rural areas.

Commissioner Kathleen Q. Abernathy, Chair of the Joint Board, stated, “it seems clear that the universal service fund can no longer subsidize an unlimited number of connections provided by an unlimited number of carriers.”⁸

It is important that the goals and the continued viability of the Universal Service Fund are not compromised under the guise of creating competition for competition’s sake.

⁷ See §§ 214(e)(2) and (e)(6), § 251(f), and § 253(f)

⁸ *In the Matter of Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, FCC 04J-1, February 27, 2004, Separate Statement of Commissioner Kathleen Q. Abernathy.

Conclusion

The North Carolina Rural Carrier Group urges the Commission to deny U.S. Cellular's Petition. Absent denying the Petition, the North Carolina Rural Carrier Group recommends that the Commission delay action on U.S. Cellular's Petition until it issues its order on the Recommended Decision. This current rulemaking process will directly affect the North Carolina Rural Carrier Group when a second ETC has been or will be designated in their rural service areas.

North Carolina Rural Carrier Group

Star Telephone Membership Corporation
Atlantic Telephone Membership Corporation
Barnardsville Telephone Company
Citizens Telephone Company
Ellerbe Telephone Company, Inc.
MebTel, Inc.
Randolph Telephone Company
Randolph Telephone Membership Corporation
Saluda Mountain Telephone Company
Service Telephone Company
Tri-County Telephone Membership Corporation

Respectfully Submitted by their Consultants

December 7, 2004

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